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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

UNITED STATES OF AMERICA, . Criminal No. 13-cr-00607-JFB-AYS-1
.
Vs. . 100 Federal Plaza
. Central Islip, NY 11722
PHILLIP A. KENNER, .
TOMMY C. CONSTANTINE . DATE June 7, 2021
.

TRANSCRIPT OF HEARING
(Via Video)
BEFORE HONORABLE JOSEPH F. BIANCO
VISITING JUDGE

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1 THE CLERK: Calling criminal case 2013-607. United
2 States of America versus Phillip Kenner and Tommy Constantine.
3 Counsel, please state your appearances for the record.

4 MS. O'CONNOR: Assistant US Attorneys Madeline
5 O'Connor and Diane Leonardo for the United States. Good
6 afternoon, Your Honor.

7 THE COURT: Good afternoon.

8 MR. KOSTOLAMPROS: Good afternoon, Your Honor, this is
9 George Kostolampros of Venable representing Danske. And here
10 with me are Xochitl Strohbehn, Doreen Martin, and Kelly Weiner.

11 THE COURT: Good afternoon.

12 MR. WOLINSKY: Good afternoon, Your Honor, this is
13 Marc Wolinsky, one of the Diamante homeowners. And there's
14 quite an audience of homeowners on the line.

15 THE COURT: Good afternoon.

16 MR. WOLINSKY: Good afternoon.

17 MS. RAMACHANDRAN: Good afternoon, Your Honor, this is
18 Seethe Ramachandran, on behalf of Owen Nolan.

19 THE COURT: Good afternoon.

20 MR. MULRY: Good afternoon, Your Honor, Kevin Mulry
21 from Farrell Fritz, for the DTSL parties.

22 THE COURT: Good afternoon.

23 MR. SOUTHER: Good afternoon, Your Honor, Tom Souther
24 also on behalf of the DTSL parties. I'm with Freeh Sporkin and
25 Sullivan.

1 THE COURT: Good afternoon.

2 MR. MAIN: And Your Honor, Steve Main on behalf of the
3 CSL Properties.

4 THE COURT: Okay, good afternoon. I think that covers
5 everybody. And I would just ask, it sounds like everybody has
6 their phones mute, I would, because we have a lot of people on
7 this call, to make sure that your phones are muted so that we
8 don't have any background that will interfere with our ability
9 to hear.

10 As you know, I scheduled this conference to address
11 the ongoing issues with respect to the forfeiture of the
12 resort. I've reviewed all the various submissions that have
13 been filed with the Court since the last conference. So
14 similar to other conferences, I'm going to just give you my
15 preliminary thoughts based upon my review of the papers of how
16 I should proceed, and then I'll give everybody a chance to be
17 heard and you know, persuade me that there's a better way
18 forward, if you think my approach is not the one that should be
19 followed.

20 So there were three issues that were outlined in the
21 letters. First, with respect to the interlocutory sale, my
22 view is that absent all the parties working together toward an
23 interlocutory sale, I'm not going to pursue that. I did ask
24 the Government to outline what the interlocutory sale would
25 look like. However it's my view that, although the Government

1 believes that the Court has the authority to order third
2 parties such as the Bank and a foreign entity to participate in
3 an interlocutory sale, my view is the law is less clear on
4 that. And even if I had the authority, I think as a practical
5 matter, as Mr. Kostolampros outlined briefly in his latest
6 letter to the Court, there are a lot of practical
7 considerations that the Government has not really addressed.

8 So I'm not going to waste any more time on that.
9 Obviously if the parties were all in agreement that that was
10 the best course and I know obviously at one point the Bank was
11 urging me to do an interlocutory sale, at one point the
12 Government was telling me as soon I entered the preliminary
13 order of forfeiture we would be able to move forward on an
14 interlocutory sale. And obviously that was a long time ago.

15 But the Government is not moving for an interlocutory
16 sale now. The Bank doesn't want an interlocutory sale now. So
17 it seems to be it would be not prudent for the Court to try to
18 force that issue under these circumstances. So I'm really done
19 talking about that. Again unless everybody agreed, which I
20 don't think is going to happen, but unless everybody agreed for
21 whatever reason that that was a viable option at this point.

22 On the broader issue raised in the letters, and Mr.
23 Wolinsky spoke to this as well, I know the view is that the
24 Government is overly optimistic, I guess is the best way to put
25 it, that the Government makes this distinction between and

1 interlocutory sale and a final order of forfeiture. And they
2 are of the belief that once the Court enters a final order of
3 forfeiture that some of the issues with respect to an
4 interlocutory sale, practical and/or legal issues, will be
5 resolved by their ability to begin that process, seeking
6 immediate assistance of the Mexican Government, to achieve the
7 forfeiture of the resort. I know Mr. Wolinsky pointed out in
8 his letter that he thinks that that is not necessarily going to
9 be the Mexican Government's response.

10 But the bottom line on that issue is, I have no way
11 of making that judgment as we sit here today. The property is
12 forfeitable under American Law, for the reasons I've already
13 outlined, and you know, it's not really the Court's role at
14 this point to try to predict what the Mexican Government's
15 response would be to a final order of forfeiture.

16 So, as long as the Government has the legal right to
17 pursue this under US Law, which they clearly do, that issue
18 unfortunately I think has to await further adjudication. So to
19 the extent there's any request for the Court to somehow abandon
20 or discontinue the Government's ability to seek such a final
21 order of forfeiture at this juncture, I'm declining to do so
22 for the reasons I've just indicated.

23 On the Silver Peak assignment, I'm not making any
24 final decision with respect to that today. I did read
25 obviously the letters as it relates to the legal issues

1 surrounding that. I was somewhat surprised at what I would
2 consider to be the dearth of authority as to whether or not
3 Silver Peak can stand into the shoes of the Bank and have
4 whatever interest the Bank ultimately, is adjudicated by the
5 Court to have. The Court partially ruled on that. There's
6 another piece that's left outstanding.

7 My instincts are that there should be no reason why,
8 it's not prejudicing the Government interests if the Bank has
9 an interest that's superior to the Government's, it's unclear
10 to me why that they could not assign that. But I'm not
11 prepared to make that ruling here. And the reason at this
12 point, the reason I don't think I need to address that at this
13 point -- I do think that the amount of information given to the
14 Government regarding this transaction is really insufficient
15 for them and/or the Court to evaluate it and determine whether
16 or not it is an assignment that should be recognized under the
17 law for the issue of forfeiture and bona fide purchase of
18 value, that whole issue as it relates to forfeiture.

19 But just in general, whether or not it's a valid
20 assignment, and also whether or not there is some aspect to the
21 nature of that transaction to Silver Peak itself that could
22 somehow diminish the value of the property or cause some issue
23 with respect to the property that the Court would not
24 anticipate based upon the information it has now.

25 So if in fact, and I understand Mr. Kostolampros

1 indicated that not everything has been put to paper because of
2 the uncertainty surrounding whether or not the Government
3 and/or the Court would approve this. But there has to be more
4 details that could be provided to the Government and/or to the
5 Court, so that the Court could properly assess whether or not
6 there are any issues. I know the Bank has agreed to continue
7 to be bound by the jurisdiction of the Court, which is
8 something that the Government raised. But my view is that
9 there may be more issues than that that I can't fully envision.

10 And again, if you want to explore this further we
11 can. I could ask the Government more details about exactly how
12 they think this arrangement could injure the Government's
13 interest in obtaining forfeiture in some way. But that's where
14 I stand with respect to Silver Peak.

15 So having formed those two views, my bottom line for
16 purposes of today call is, is that -- and I am sensitive
17 obviously to the interests of innocent third parties that
18 continue to be potentially impacted by this proceeding. And so
19 I'm going to back to what I had anticipated in November, when I
20 made that partial ruling with respect to the summary judgment
21 motion, I anticipated at that time that there would be limited
22 discovery on the outstanding issue with respect whether the
23 Bank, bona fide purchaser of value with respect to the
24 remaining amount. I anticipated that would be relatively
25 brief. That there would be supplemental submissions on that

1 issue that would be relatively brief. And then the Court would
2 make a decision very quickly after receiving those papers, to
3 reach a final adjudication with respect to the Bank's summary
4 judgment motion.

5 Obviously I was persuaded that it might be resolved
6 and that's why we lost another six months. But I'm not going
7 to be persuaded any more. I'm going forward. And my own
8 question really for the purposes of that -- actually it's two
9 questions, I did obviously see that the Government narrowed its
10 request. The Bank responded. And I still think the
11 Government's requests are not narrow enough for purposes of
12 what the outstanding issues are. Some of them are very broad
13 and very vague. And some of them I think would take a long time
14 for the Bank to do, such as providing emails for very broad
15 categories of requests.

16 So I'm going to require narrowing of those document
17 requests. But I'm trying to endeavor what the most expeditious
18 amount of time that could have that happen. Have any remaining
19 discovery produced. And what I think would be two depositions.
20 And then have the supplemental submissions.

21 So that's my intention to begin discussing that right
22 now. But before I do that, let me hear from everybody to see
23 if there's something they want to bring to my attention at this
24 point. Mr. Kostolampros, you can go first.

25 MR. KOSTOLAMPROS: Sure, Your Honor. There's a couple

1 of other issues that remain outstanding. And this goes back to
2 the interlocutory sale. The reason why we thought an
3 interlocutory sale was proper was because the isn't paying its
4 bills, right. So, and then the question becomes is, especially
5 now that it's really unclear whether the Government could
6 effectuate a sale here.

7 Let's say Danske's claim is recognized to the amounts
8 that we think it is, right now if the status quo is as it
9 remains, the underlying asset is being depleted. The
10 underlying properties are being sold. So what ultimately is
11 going to be sold will be less than what it is right now. So
12 that remains unclear as to how or why properties should be
13 continued to be sold on the resort when Danske will never a
14 return on those amounts. None of those sale amounts are being
15 set aside for repayment to the lender.

16 So you know, that's a real issue I think going
17 forward as to what happens given that it's unclear. Even if
18 you move expeditiously, Your Honor, we move expeditiously
19 through discovery, once a final order of forfeiture is reached
20 the question remains how long will the property be, you know,
21 left as is. So that is one issue that's left unaddressed.

22 And you know, the Government has raised this issue
23 about a distinction between a final order of forfeiture and a
24 preliminary order of forfeiture, I don't see anything in the
25 basis of law on a distinction of why they can't move forward.

1 It just seems to me that a sale needs to happen. It should
2 proceed. And the Government should proceed in effectuating
3 that sale and that requires them to go through Mexico. And
4 they should be ordered to do so if they don't withdraw the
5 property because ultimately, you know, the underlying resort is
6 going to be devalued. And it leaves uncertainty, obviously for
7 the Bank as what we think is the only secured lender here, and
8 claimant --

9 THE COURT: Why do you say that that doesn't make a
10 difference in terms of the process, why wouldn't it make a big
11 difference if the Court ordered final order of forfeiture of
12 the resort to believe that under those circumstances the
13 Government's ability to move forward would be much higher than
14 it would be at this point where you're telling me that if I
15 were to order an interlocutory sale it would not work. So, I'm
16 not sure why you think that we're in the same position at this
17 point as we would be if there was a final order of forfeiture.
18 I understand your first point. But in any event.

19 Let's go back to your first point for a minute. I'll
20 have the Government address that. But you know, my view is, I
21 don't know how this summary judgment motion is going to be
22 resolved. If it is resolved in the way that you believe it's
23 going to be resolved, then that issue that you raised in my
24 view would fall by the wayside, if the Court ends up
25 recognizing the Bank's claim at an amount that's higher than

1 the -- the value, then I think all other issues going to fall
2 away. You can correct me if I'm wrong, but -- right? Or am I
3 missing something? What you're saying I think --

4 MR. KOSTOLAMPROS: I don't know that --

5 THE COURT: -- problem if the Court were to rule, it
6 ruled otherwise, but --

7 MR. KOSTOLAMPROS: I don't know that to be the case,
8 Your Honor. I mean we've got every indication that regardless
9 of Danske's claim amount, the Government is going to move for
10 forfeiture and won't withdraw the property. So you could
11 recognize 160, \$180 million worth of Danske's claim, and I
12 expect that the Government is going to ask and move forward
13 with the forfeiture and ultimately a sale.

14 And the issue that we have again I go back to this
15 is, the property is being sold right now, time share interests,
16 homeownerships are being sold and marketed. And every time
17 there's a sale of that, that will affect ultimately what is
18 sold later on. And the longer that the sale or this process
19 takes, the more depletion of value of the underlying resort
20 itself. So we will never be able to go back and call back sale
21 amounts that are being used now to just keep the resort alive.

22 And for Danske that's a real problem because we're
23 depleting the underlying collateral that is the collateral that
24 forms the basis of its underlying loan. Before --

25 THE COURT: Why isn't it in the Bank's interest to

1 keep the resort alive? I don't understand that.

2 MR. KOSTOLAMPROS: It is, Your Honor, it is to keep to
3 alive. But it also is time to keep the highest value of the
4 underlying property, especially since it's so uncertain as to
5 when a sale will happen. And then, and for us it's important
6 -- if the Government is going to stick to its position that
7 it's going to seek forfeiture regardless of Danske's claim,
8 then that's a real problem because the underlying collateral
9 could be sold.

10 THE COURT: All right. Do you want to address the
11 other points?

12 MR. KOSTOLAMPROS: Sure, Your Honor. The other point
13 was as to a note sale. You know, we've raised in our letter
14 that we think we provided enough information. And I understand
15 Your Honor's ruling. One thing that would be helpful to know
16 is, if we were to move forward with at least papering a deal,
17 with Silver Peak or anyone else, could we provide those, the
18 underlying contracts or draft contract, draft agreements ex
19 parte to the Court, for the Court's determination as to
20 whether, you know, there's any issues with the underlying
21 agreements themselves.

22 THE COURT: Well, the only problem with that is --

23 MR. KOSTOLAMPROS: We would provide a copy to the
24 Government as well. But redacting certain portions that we
25 think are just not relevant to the Government. But we would

1 leave those unredacted portions for the Court.

2 THE COURT: The only issue with that is, you know,
3 it's very difficult for me to determine, you know, these are
4 business type decisions I guess. It would be hard for me to
5 know whether something -- there could be some detriment to a
6 particular provision that might not jump out at me. So it puts
7 me at a disadvantage to try to figure that out myself. But my
8 suggestion, you know, provide as much as you can to the
9 Government and I would even -- maybe the Government will object
10 to this, but under these circumstances, even doing it under
11 seal to both the Court and to the -- not ex parte to the Court
12 but some type of protective order to the Government that
13 they're not going to disclose that beyond just commenting, you
14 know, in a sealed letter back to the Court, that you would
15 receive obviously. What any outstanding issues would be with
16 respect to it. So I don't know. That's something to think
17 about.

18 But I just think it would be very difficult for me to
19 start analyzing provisions to try to figure out on my own
20 whether or not there's some hidden issue with that provision
21 that I might not be aware of.

22 MR. KOSTOLAMPROS: Okay. And Your Honor, one other
23 thing is, you know, the Government has made a distinction about
24 a final order of forfeiture as compared to the preliminary
25 order that we have now, is you know, we were very close on a

1 settlement. And the Government agreed to a sharing
2 arrangement. I think that the Court could move quickly to a
3 final order of forfeiture given that the Bank and the
4 Government were in agreement at least on the sharing
5 arrangement. And I believe two of the claimants of the five
6 claimants out there were willing to agree to that sharing
7 arrangement as well.

8 So what you have left is three claimants out there
9 who were not brought into the discussion. If the Government
10 were willing to do so, we could move to a final order of
11 forfeiture I would think pretty quickly and move out any
12 discovery issues, any other findings of the Court, move to a
13 final order of forfeiture and then have the Government do what
14 it plans on doing with the property.

15 THE COURT: Well, I'm happy to hear from the
16 Government on that. But that sounds good to me. But what
17 about the other three claimants though. What are you proposing
18 with respect to them?

19 MR. KOSTOLAMPROS: What I would propose is to present
20 the sharing arrangement to those claimants, and then have them
21 consider whether they would agree. And if not then I think we
22 could move quickly to a motion to dismiss on those claimants,
23 because I don't think they even have standing.

24 THE COURT: But I thought you told me the last time, a
25 couple of weeks ago, that there were more than -- I think we

1 had a discussion about that, and you said, well the issues are
2 much bigger than just that. Or was I misunderstanding what you
3 were telling me?

4 MR. KOSTOLAMPROS: No, I think from our standpoint it
5 was, we didn't know what those claimants were. And I think for
6 our -- our position has always been that if someone hasn't
7 filed a claim yet, they don't have a claim. You know, the law
8 is pretty strict that you have to file your claim within a
9 certain time period. And the Government was raising an issue
10 that they may not have -- that Your Honor may entertain those
11 claims. And I suggest otherwise. That no, you don't have to.
12 The law is clear, there's plenty of case law that makes very
13 clear that if you don't file your claim within a certain time
14 period, you have no right.

15 Again I think this can move pretty quickly, Your
16 Honor. Basically the agreeing to the sharing arrangement, and
17 we would all agree to a final order of forfeiture.

18 THE COURT: All right, I'll ask the Government about
19 that. All right, anything else?

20 MR. KOSTOLAMPROS: That's it for now, Your Honor. I
21 obviously want to address discovery, but I'll do that --

22 THE COURT: Right, yes.

23 MR. KOSTOLAMPROS: -- when you get there.

24 THE COURT: All right. Let me hear from the
25 Government.

1 MS. O'CONNOR: Your Honor, it's apparent to the
2 Government that there's a misunderstanding between the sale
3 processes. An interlocutory sale, as you know, occurs during
4 the pendency of the proceeding. And the Government doesn't
5 have title. So each time the Bank says that they don't
6 understand why we're not conducting a sale, we don't have
7 title. But we can oversee it. We're willing to do that.

8 But they, the current title holders would be the ones
9 that would have to convey the title. We can handle the
10 majority of the aspects of the sale. But that would require
11 Danske and DCSL to transfer the paperwork. And that's what
12 ordinarily happens on a regular basis when the Court orders an
13 interlocutory sale. If it's the defendant that owns the
14 property --

15 THE COURT: All right, let's not, I don't want to
16 waste time on the interlocutory sale because that's not
17 happening.

18 MS. O'CONNOR: Fine.

19 THE COURT: So why don't you address the final order
20 of forfeiture. First of all, what about the Bank and Mr.
21 Wolinsky's point that even with a final order of forfeiture
22 it's far from clear how long it would take, if ever, for the
23 Government to be able to forfeit this property in Mexico.
24 What's your response to that?

25 MS. O'CONNOR: Your Honor, very recently the Mexican

1 Government assisted the US Government with forfeiture of
2 property in Mexico. In fact it assisted our office in 2020,
3 our office filed a civil forfeiture case. And the Mexican
4 Government assisted us with noticing and forfeiture of the
5 property in Mexico. We requested an MLAT (phonetic), and the
6 Mexican Government assisted in restraining the property,
7 providing notice. And then the Government was able to
8 effectuate the forfeiture of several of the properties down
9 there. And there are a couple more that the Government is
10 working on.

11 But the bottom line is, in November of 2020, we
12 received assistance from the Mexican Government to achieve
13 forfeiture. So it is not out of the question by any means.
14 Obviously we can't guarantee anything. But that being said, we
15 have received assistance very recently.

16 So I think the concerns that the Government would be
17 unable to achieve forfeiture are unfounded at this point.

18 THE COURT: There's also the issue of timing right, I
19 mean how long would that take? And Mr. Kostolampros points out
20 that people, the Bank is allowing people obviously to continue
21 to sell their time shares and things of that nature. What
22 about that?

23 MS. O'CONNOR: Your Honor, that's an interesting
24 point, because the Government doesn't understand why Danske is
25 only now forcing the resort to choose between paying down the

1 debt or funding the ongoing operations with the revenue from
2 the sales. For the past 11 years Danske has allowed the resort
3 to use revenue to fund the ongoing operations under the guise
4 of the revolving loan arrangement, where the resort would pay
5 down the revolver, immediately reborrow the same funds, and it
6 created this false appearance that the debt was being paid down
7 when in reality Danske was just accruing the debt while the
8 resort was surviving on the existing time share and parcel
9 sales.

10 So it would be continuing to do the same thing here.
11 Yet now that Danske has reached the \$210 million claim, it's
12 saying we're putting an end to that. We think the timing is
13 interesting.

14 But we also don't understand (inaudible-background
15 noise) the sales are depleting the value of the resort. They
16 generate the revenue. Those are the sales in the ordinary
17 course. Those help the resort sustain itself and the resort
18 has sustained itself on those sales for the past 11 years. So
19 it's unclear how that is actually damaging the resort, and if
20 so why was the Bank allowing that to happen for the past 11
21 years.

22 THE COURT: All right, what about Mr. Kostolampros'
23 view that the parties were very close to settling it in terms
24 of you know, agreeing to a sharing arrangement and entry of a
25 final order of forfeiture and that that is still the quickest

1 way to resolve these issues. What's the Government's response
2 to that?

3 MS. O'CONNOR: We agree that we were very close to it.
4 We don't understand why Danske abandoned the settlement
5 agreement that had been in place. And in fact, the concerns
6 that Danske filed in its letter about the timing of the sale,
7 and their claim being recognized, all of those issues would
8 have been resolved in the settlement that we had contemplated.
9 In fact we were willing to allow Danske to step back from the
10 sale process so it was further removed from any potential
11 liability, although we still don't understand what liability
12 they're exposed to and they haven't been able to articulate
13 any. But that being said, settlement in place --

14 THE COURT: They articulated that a lawsuit has
15 already been filed in Mexico. Why isn't that a concern?

16 MS. O'CONNOR: The only, our understanding is that --
17 Mr. Wolinsky can probably speak to that, but that the concern
18 was that that property should be sold according to the current
19 Master Plan, and our sale proposal and our sale agreement,
20 would have had the sale be conducted pursuant to the existing
21 Master Plan. So if that's the case, we're unaware of any other
22 --

23 THE COURT: But the Bank is saying that all that
24 really needs to be done to bring in these other additional
25 claimants to see if they have any objection to what was being

1 proposed, and that then it might be able to move forward. Is
2 that not true?

3 MS. O'CONNOR: We, that's what we actually had said is
4 the case, Your Honor. And it was Danske that said that they
5 didn't want to wait for the other parties to come in and to
6 have a say in the process. And our position was, we can agree
7 to a sale. But under the statutes, the third parties had a
8 right to weigh in. And then if depending on whether we had the
9 consent of all parties, you know, the statute, a particular
10 statute would dictate the procedure for the sale.

11 But we've always been of the opinion that we can
12 reach a settlement of Danske's claim, at the same time that we
13 would reach a settlement agreement that is an agreement for an
14 interlocutory sale. We could move forward. And then any
15 outstanding claims could be resolved while the sale is
16 occurring or after the fact.

17 So we still believe that's the best course forward,
18 reaching a settlement of Danske's claim and interlocutory sale
19 agreement.

20 THE COURT: All right.

21 MS. O'CONNOR: But we can't -- just to be clear, Your
22 Honor, we can't have a final order of forfeiture, that's what
23 the Government receives after the litigation and the ancillary
24 proceeding is fully concluded. Because I think that's where
25 the difference is coming in.

1 THE COURT: All right. I'll come back to that. Let
2 me hear from everybody else. Ms. Ramachandran.

3 MS. RAMACHANDRAN: Your Honor, I'll just speak to the
4 issue of the other claimants coming in. Because we were, Mr.
5 Kostolampros is right, we were very close to reaching an
6 agreement here. Certainly we have reached an agreement in
7 principle with respect to how the proceeds of any sale were to
8 be shared.

9 But I think the issue with the claimants is that
10 there are some claimants out there that they haven't actually
11 filed a claim. The Government believes they do have claims.
12 They said that those claims haven't been filed on the docket.
13 And that created an uncertainty where because those claimants
14 are potentially still out there, you know, that created too
15 much uncertainty for the Bank in entering into this settlement
16 agreement. At least that was my understanding of it. Not that
17 they weren't willing to wait for that to happen.

18 And it had always been my view that whoever is out
19 there should come in because I would like an opportunity to, I
20 mean to the extent they do have an objection to the settlement,
21 to you know, challenge their claim if it's been filed in an
22 untimely way. And that was always my view, it's still my view.
23 And so I think that needs to happen very promptly, if there are
24 any other claimants. I mean we've been, I've only been
25 involved in this case for a year, but I know other people have

1 for five years. So I think that needs to happen immediately.
2 And that would also lend some clarity to you know, any
3 settlement discussions, if there are to be any, moving forward.

4 I mean my understanding of why the settlement didn't
5 end up happening was there were a few sticking points between
6 the Government and the Bank, they were minor in my view. But I
7 don't represent either party, so I'm not fully versed in all of
8 their concerns. But I think that was the reason. Not that, you
9 know, we didn't want to wait for the other claimants. I mean I
10 didn't want to wait to the extent that I think the claimants
11 should be coming forward if they really have claims here so
12 that we have an opportunity to challenge it.

13 THE COURT: I'm a little -- are these claimants that
14 the Government received them but they weren't filed? Are those
15 the claimants we're talking about?

16 MS. RAMACHANDRAN: I think so.

17 THE COURT: All right, well I saw the Government in
18 the papers agreed to provide -- have those been provided to the
19 Bank, or to the parties, or no?

20 MR. KOSTOLAMPROS: No, Your Honor.

21 THE COURT: They have not?

22 MR. KOSTOLAMPROS: No, they have not, Your Honor.

23 THE COURT: Okay. But they -- they did agree to do
24 that, right?

25 MR. KOSTOLAMPROS: They did in the letter, Your Honor.

1 THE COURT: Yes, okay. We'll come back to that. All
2 right. Mr. Wolinsky.

3 MR. WOLINSKY: Yes, thank you, Your Honor. I really
4 want to be constructive here. So let me go through a list and
5 give you my reactions and perspectives. Obviously I agree with
6 you that an interlocutory sale is not going to work. You can't
7 force people to do something they don't want to something they
8 don't want to do.

9 On the final order of forfeiture, Your Honor, I don't
10 think I'm going to change your mind as to whether the property
11 is subject to forfeiture and whether it should be limited to
12 the equity interest in the US. But I would repeat that point,
13 that is the only property that is subject to your jurisdiction
14 that can be forced sale without involving the Mexican
15 Government.

16 I heard the Government's position, answer one of the
17 two questions that you asked. The first question was, does the
18 Government believe it has the ability to obtain cooperation
19 from the Mexican Government. And there they said yes, in
20 November of 2020 they did get cooperation from the Mexican
21 Government. But they never answered your question as to how
22 long this process is going to take. And that's a really
23 important question for the homeowners in light of everything
24 you've heard from Danske Bank and its unwillingness to release
25 collateral during the period that this is going on.

1 So I would ask you to press the Government not only
2 for an estimate of how long it's going to take, but for a
3 commitment that it will be pursued on a very specific time
4 table that is acceptable to Your Honor and to other parties of
5 interest.

6 Way back when the Government represented to you that
7 a proceeding in Mexico to forfeit this property is not going to
8 take years, and we're now many years into this and we're no
9 closer to it. So if there's going to be proceedings in Mexico,
10 it has to be pursuant to a tight committed time frame in light
11 of what Danske Bank has put forward.

12 Finally Your Honor, Silver Peak --

13 THE COURT: Yes, go ahead.

14 MR. WOLINSKY: Yeah, Your Honor, with respect to
15 Silver Peak, I am at a loss to understand from a business
16 perspective, from a practical perspective, why the Government
17 is standing in the way of that transaction. There is no -- you
18 can throw up every objection in the world, legal or otherwise,
19 but if you step back and look at it from a perspective of
20 what's good for the resort and what's good for the victims,
21 taking out Danske Bank, which is saying it's not going to allow
22 (inaudible-background noise) of sales in the ordinary course to
23 fund the resort, allowing that, the note to be transferred to
24 Silver Peak which is saying it will allow the resort to be
25 funded on an ongoing basis, with ongoing sales, is a no

1 brainer.

2 And Your Honor I really ask you to press the
3 Government to articulate a business reason, as opposed to a
4 legal reason as to why the Government is objecting to a Silver
5 Peak sale. Because from the homeowners' perspective, from the
6 victims' perspective, that, there's no reason why that
7 shouldn't go forward.

8 The only thing I've ever heard is that the Government
9 is concerned that Danske Bank, if Danske Bank exits it will not
10 be subject to discovery. Well Danske Bank is committed to make
11 itself available for discovery. And obviously from Silver
12 Peak's perspective, Silver Peak wants Danske Bank to be
13 available for discovery because Silver Peak is going to
14 continue to litigate the priority of the loan that it just
15 purchased.

16 So Your Honor, those are the points that I offer to
17 you to try and move this forward. I'm trying to be
18 constructive. And those are my points.

19 THE COURT: All right, again, very briefly, on the
20 last point, I hear what you're saying. And I understand it
21 completely. I'm just in -- I think because the Government
22 hasn't received many details regarding the nature of the
23 transaction, it's tough to then, for me to put them on the
24 spot. They articulate, you know, what the problem is. And if
25 their response is going to be well we don't know if there's a

1 problem because we don't have all the details. But I hear
2 what you're saying. And again I'm not shutting the door on
3 that. But I do think there's going to have to more information
4 provided to them for me to have some degree of comfort that
5 they're able to assess it.

6 But on your other point, if there is, you know, the
7 Court has some ability to make sure that the Government, if
8 there is a final order of forfeiture that's entered, that
9 they're doing, they're expeditiously moving forward with
10 respect to the Mexican Government. Or anything else for that
11 matter. So I hear that concern. And you know, my goal, I know
12 this will not sound, or ring hollow given how long this is
13 going on, but my goal has always been to try to move this
14 forward so that innocent third parties would not be hurt and
15 that the most value would be available for everybody. But
16 unfortunately that's not the path that I've been able to keep
17 this on. But in any event, I'll come back to your points when
18 we get to -- I want to make sure nobody else has anything else
19 to add. Mr. Mulry or Mr. Souther?

20 MR. SOUTHER: Yes, Your Honor, this is Tom Souther.
21 If I could, just to clarify one thing that the Government just
22 raised in terms of the, they raised the question about why
23 Danske is now saying after 11 years they're now saying that
24 the, they're taking this position about not releasing
25 collateral. And I just would point out from the borrower's

1 perspective, I mean we were current on our principal and
2 interest obligations up through the period of time when the
3 protective order was entered in 2015. And continued to be
4 current thereafter. It's really only in the last couple of
5 years that we have not been able to meet our principal and
6 interest obligations.

7 And it's only through the cooperation of Danske Bank
8 during that period of time, with the borrower, that we've been
9 able to utilize those proceeds to try and keep the operations
10 going. And trying to preserve value.

11 You know, if the Bank hadn't been willing to do that
12 for the last two years, we would have had to been in a dire
13 situation, even more dire situation two years ago. You know,
14 and if the Bank is not willing to release the collateral going
15 forward, you know, I guess we raise the question of, how are we
16 supposed to make payroll. How are we supposed to maintain the
17 property. These are practical things that we, on the ground,
18 that our client on the ground has to face every day. And I'm
19 not sure that the Government sort of appreciates that.

20 You know, the management team has been trying to keep
21 this going, but the Government seems to think that you know,
22 that they're figure out another way to keep it going to for,
23 you know, however long it takes to see it through to the end.
24 And without the support of the lender, that's just not
25 possible.

1 And if Danske has reached its limit, which it sounds
2 like they have, then you know, we need an alternative. And
3 that alternative has been proposed in terms -- in the form of a
4 solution, which would be to allow Danske Bank to transfer the
5 note. And assign the note. And yet when we come up with that
6 proposal, again we're just faced with you know, the reaction by
7 the Government is, no, that's not, we object to that. And they
8 raise some concerns. But frankly they're not -- I mean I just
9 don't see them as being, you know, concerns that are
10 appropriate frankly.

11 Now what, I'm sort of at a loss as what does the
12 Government want here. A note sale at least would provide a
13 short term reprieve and may lead to a longer term solution. You
14 know, in terms of a short term reprieve, it at least will allow
15 the parties to maintain the status quo, which has been the
16 Government's mantra for six years.

17 But if the sale is not permitted, you know, the value
18 is likely to be further eroded. And I don't think there's any
19 guarantee that the project will remain viable in the near term.
20 So you know, to me that's a critical component in the near
21 term. I mean we're not talking about, you know, six months
22 from now.

23 If the Bank is going to -- I'll just give you a
24 concrete example, Judge. If property owners have put down
25 deposits on real property that the borrower is now not going to

1 be able to deliver title to those people, then the borrower is
2 going to have to return those deposits to the purchasers of
3 that real estate. And you know that's, not only is that going
4 to hurt future cash flow, you know, in terms of the ability of
5 the borrower to receive the subsequent payments that are due
6 from that purchaser, but it's going to force them to repay
7 monies that have already been paid to the borrower.

8 I mean this is a real time current problem that we're
9 facing. And you know, I do think that the solution, which
10 doesn't put the Government in any different posture, it just,
11 it puts a lender in place that has expressed a willingness to
12 allow the operations to continue in the manner that they are
13 currently operating.

14 And the Government would have --

15 THE COURT: Why is there such concern -- why is this
16 concern of giving the Government the details of the transaction
17 to the extent they've been agreed upon. It's not like the
18 Government is like a competitor, a business competitor or
19 something like that. I'm a little at a loss to understand why
20 has there not been more information given to the Government so
21 that they can articulate, try to articulate to the Court why
22 this might be a problem. I don't know if you can answer that.

23 MR. SOUTHER: Well we're not a party to the
24 negotiations, Judge, so I'm probably not the right person to be
25 answering that. But I can give you my client's perspective on

1 that, is that that information really has the potential to have
2 an adverse impact on a future sale of the property, if that's
3 the direction that the Government is going in. You know, to
4 disclose those kinds of details.

5 And frankly, I just don't see what relevance it is to
6 the Government as to what some of the details of that
7 transaction are. I get the one point that the Government has
8 made was, you know, they have a concern under the forfeiture
9 law that Mr. Kenner, the defendant, is not somehow using this
10 vehicle as a means of using a straw person to try and reclaim
11 some interest in the property. But you know, to the extent
12 that the Government goes beyond that and says, well, we don't
13 want Mr. Jowdy to have some sort of an interest. We've told
14 the Government that Mr. Jowdy will not have an equity interest
15 in the entity that may acquire this note.

16 I mean what more do they want from him. He's already
17 not challenged their bid to forfeit his interest in DCSL. I
18 don't know what more that they want from him.

19 THE COURT: All right. Mr. Main, is there anything
20 you want to add?

21 MR. MAIN: Nothing at additional, Your Honor.

22 THE COURT: All right. So here's what I'm going to
23 propose, and I'm going to back to Mr. Kostolampros now. I'm
24 done --

25 MR. KOSTOLAMPROS: Your Honor, can I --

1 THE COURT: Yes.

2 MR. KOSTOLAMPROS: I apologize if I interrupted you.

3 THE COURT: Go ahead.

4 MR. KOSTOLAMPROS: I would like to address a couple
5 of points that the government made.

6 THE COURT: Sure.

7 MR. KOSTOLAMPROS: One of which is what has changed
8 and why we're raising sales can't go on as they are right now.
9 The issue is is that interest payments stopped in September of
10 2019. Right now, I mean those were amounts that were going to
11 Danske. And we get it, that the Court still, you know, has got
12 to decide what our claim is. But it seems to us here, and
13 again it just from an equitable standpoint, how could the Court
14 allow those -- those amounts could be used by the borrower, I
15 know this is not what the borrower and others on this call what
16 to hear, but Danske as a lender has a responsibility here. I
17 mean these are amounts that we'd be getting paid.

18 Now those amounts are free monies to the borrower,
19 right now, to continue on. Those amounts, there should be some
20 amount set off, not to pay Danske right now, but to be set off
21 and cordoned off and escrowed for determination of how to be
22 used later, assuming that Danske's claim is recognized.

23 That is the biggest difference from why Danske
24 allowed sales to go on before and why now we're saying look, we
25 can't continue on this. And the reason why is because this

1 process has been -- it's taken a long time and we get that you
2 could get to our claim pretty quickly we think, but the sale
3 process won't. So that's number one.

4 Number two as to why we didn't provide the underlying
5 document, Your Honor, it's really practical reasons. We're
6 going to have to negotiate with Silver Peak on the agreement.
7 We've already spent you know, God knows how much on litigating
8 this. We want to get from the Government that look, we think
9 these terms are good enough for us to move forward with this
10 sale. Or at least we're not going to object to these terms.

11 But we don't even get that. We've gotten from the
12 Government, Silver Peak was in a deal before with Jowdy, they
13 raised that -- you know, our allegations against Silver Peak.
14 You know, I just don't get the sense, we can present them any
15 document and they're going to still say no. That's the issue
16 ultimately.

17 So those are the two points I wanted to raise Your
18 Honor. Thank you.

19 THE COURT: All right. That was helpful. Let me
20 just, this is the way we're going to proceed. I don't think,
21 I'm not in a mindset where I think we should proceed only on
22 one of these three tracks that remain. So, we're going to
23 proceed potentially on all three. It will be up to the Bank
24 obviously to decide whether or not for example they want to
25 pursue the Silver Peak angle, and/or to try to continue to

1 resolve the whole matter with the Government. Which you know,
2 I'm hoping that track continues. I'm hoping both of those
3 tracks continue actually, because I think they're preferable
4 than continued litigation.

5 But I'm going to -- I can't not try to move
6 ultimately the claim forward so that I'm in a position to do
7 the one thing I know I can do for sure, which is adjudicate the
8 claims that are before me and the motion for summary judgment.

9 So what I'm going to suggest is, on the issue of
10 trying to reach a settlement, it sounds like it was real close.
11 It sounds like, I'm not hearing that there's any, you know,
12 obstacle that's insurmountable. And I would suggest, as has
13 been noted, and I'm urging the Government, because I don't know
14 how -- time to continue to pursue this, bring in -- if it means
15 bringing in the additional claimants to make sure that there
16 are no objections or issues to what is being proposed, that
17 sounds like a reasonable thing to do.

18 If as a result of that there's some issue where
19 there's an objection but there's a belief that maybe that
20 claimant, claim is not timely or recognizable, the Court is
21 prepared to have that issue litigated so that that doesn't
22 remain an unknown. So the Court is fully prepared to help try
23 to resolve any of the issues that remain with respect to the
24 other claimants, if that really is the only major obstacle to
25 the settlement. That seems crazy to me that that would derail

1 what would otherwise be in the best interest of everybody.

2 So I would urge that dialogue, it sounds like it
3 completely stopped after it broke down. But I would urge that
4 to get restarted and to see if that could be done fairly
5 quickly. It sounds like if there was an agreement on that could
6 be done fairly quickly.

7 But on Silver Peak, again I don't want to repeat
8 what I've said, but I'm prepared and I -- the Court, whatever
9 the Government's objections are, if I can't identify a legal or
10 practical reason why I should not allow that to proceed and
11 allow Silver Peak to stand in the shoes of Danske Bank as it
12 relates to this litigation, you know, I'm prepared to look at
13 that without the Government's consent. But there would have to
14 be some more information provided to the Government. To the
15 extent Mr. Kostolampros your concern was this is a waste of
16 time, we're giving all these details and they're never going to
17 agree to this, I'm telling you the Court is prepared to look at
18 it. You know, if the Government is given those details and
19 still can't articulate a reason why, again, legally or
20 practically I should not allow this to occur, I'm willing to
21 move forward.

22 And on the last piece, I want, my suggestion -- I
23 could go through each of the things the Government has
24 requested, and I have some views on each of them. But I was
25 going to ask, let me just confirm, I think I know the answer to

1 this. Were there any meet and confer processes related to
2 those Mr. Kostolampros, before those letters went in? I assume
3 not, right?

4 MR. KOSTOLAMPROS: No, there wasn't, Your Honor.

5 THE COURT: Right. So you know, in the next week I
6 want there to be a meet and confer, it may be futile, but you
7 know, that's what parties are supposed to do, and this should
8 be no exception. I saw that the Bank did make certain
9 concessions, which I was happy to see, with respect to you
10 know, a sampling of the draws. I think the Bank proposed one
11 for every year, over like a decade. It sounds reasonable to
12 me. I'm assuming the Government get to pick which ones. But
13 in any event, that's an example of how some of these issues can
14 be potentially narrowed before the Court rules on them.

15 My preliminary view is, with respect to depositions,
16 that as I said previously, Mr. Delvin, the Government should
17 get to depose. I think that can be done pretty quickly. I do
18 think they should be able to depose Mr. Jowdy on the limited
19 issues with respect to his relationship with the Bank and the
20 money the Bank was providing to the resort and any
21 arrangements. I know the Bank has said they produced the only
22 agreement that they had, that the Government was already aware
23 of. But I think the Government should be able to explore that
24 with him.

25 Not -- not going through his whole history with Mr.

1 Kenner and the whole case, because that's not what the issue is
2 right now. It's whether or not he has an, is at arm's length
3 with the Bank, for the money that was loaned and the additional
4 loans.

5 But other than -- the Government's request to depose
6 someone in London from the Bank. Right now those are the two
7 depositions I'm thinking of which I think can be done quickly.

8 And in terms of the categories of documents, based on
9 what the Bank has already provided and what they've agreed to
10 now, there are certain things that I thought could be narrowed
11 by the Government. But I don't think once they're narrowed
12 it's going to, from a practical standpoint, require the Bank to
13 spend weeks compiling them.

14 So my, that's a long introduction, but basically I
15 want there to be a meet and confer to see if the Government is
16 able to narrow some of those broad requests that the Bank has
17 identified. And if not, I will rule on them. And but
18 ultimately what I would like to come out of that discussion is,
19 I basically want to set a time schedule for, there's going to
20 be final decision by the Court on the summary judgment motion.
21 So it depends in part obviously on when the Bank thinks it can
22 get these documents and how quickly those two depositions can
23 take place. And you know, when those supplemental letters can
24 come to the Court.

25 But I can tell you this, once, if the Bank says that

1 it can be done by this date, then not just the Bank, everybody
2 will know that you know, within a very short time after that,
3 I'm going to make a decision with respect to that. So if
4 that's helpful I'm going to do my best to make sure that we
5 keep that on a tight time frame, and that the Court's decision
6 is on a tight time frame as well to try to address some of
7 these difficult issues that we're facing.

8 So that's my plan. Mr. Kostolampros, does that make
9 sense?

10 MR. KOSTOLAMPROS: It does, Your Honor. I'd just like
11 to circle back on one point, just to make the record clear. Is
12 we were very close on a settlement. The issue we had, it
13 wasn't just the claimants that were out there. The Government's
14 proposal was for an interlocutory sale where the borrower and
15 Danske would lead the sale process. And what was wanted was
16 like, as you mentioned, is we raised issues about the
17 Government insisting that Danske be indemnifying the Government
18 and basically taking all the risk of the sale process. That was
19 the key issue of why we couldn't move forward with the
20 settlement.

21 What I'm proposing here is, why don't we just to a
22 final order of forfeiture, agree to transferring title, agree
23 to the sharing arrangement, and let the Government you know, go
24 the MLAT process. That's what I was proposing. And I'm happy
25 to discuss that with the Government when we speak later this

1 week at our meet and confer. But that was the key stumbling
2 block.

3 THE COURT: Yes, Ms. O'Connor indicated she doesn't
4 think that -- I don't know whether she's saying that's not
5 legally possible, but why don't I just ask, because I heard her
6 say that too, but Ms. O'Connor, why, if there was agreement on
7 how that should play out, what would be the problem with that?

8 MS. O'CONNOR: The Government doesn't get title until
9 the final order, and the final order is upon a resolution of
10 all claims. What he's suggesting is trying to -- he's trying to
11 conflate an interlocutory sale with a sale upon a final order.
12 So --

13 THE COURT: But if all the claimants agree to whatever
14 final order is being proposed and whatever sharing arrangement
15 is being proposed, why wouldn't that, why couldn't the Court
16 then enter -- if every claimant is on board with this, why
17 couldn't the Court then just move to a final order of
18 forfeiture? I don't know what I'm missing.

19 MS. O'CONNOR: Well that would be a settlement of
20 everything in the case, and we're certainly agreeable to doing
21 that. But then that would be Danske conveying title to us, or
22 the trust, and then we can do the sale. But again that would
23 be settling everything. And we're certainly agreeing to do
24 that, but that's different from litigating and concluding and
25 then getting a final order.

1 So if what he's suggesting is settling everything and
2 then doing a sale upon a final settlement of everything, we're
3 happy to do that.

4 THE COURT: Mr. Kostolampros, what am I missing here?
5 I'm confused.

6 MR. KOSTOLAMPROS: I don't think you're missing
7 anything, we think that would be a -- that's sort of a silver
8 bullet here. We are in agreement, and I think Ms. Ramachandran
9 and Mr. Main are in agreement on that sharing arrangement. All
10 we need to do is get the other claimants to the table and see
11 if they agree. And if they do, we -- you could issue a final
12 order of forfeiture and we're done here. All that needs to be
13 done is the Government needs to move forward with the sale.

14 THE COURT: Right, and in the final -- it would state
15 what the sharing is going to be with respect to that?

16 MR. KOSTOLAMPROS: Yes, it would.

17 THE COURT: Yes, I don't see why that's a problem
18 either. The Government is kind of suggesting that there's
19 still going to be outstanding issues, but I don't know what
20 those issues are. What would be the outstanding issues if an
21 order of forfeiture had those provisions in it?

22 MS. O'CONNOR: No, I think, Your Honor, the Government
23 is saying, we wanted to do the settlement of everything all
24 along and Danske took the position that it didn't want to wait
25 for final resolution of all claims. So our --

1 MR. KOSTOLAMPROS: No, Your Honor. The reason is is
2 that they wanted us to -- and I apologize, I want to make clear
3 for the record here, is that they wanted us to effectuate the
4 sale. This process -- and that would be an interlocutory sale.
5 What I'm proposing here is a final order of forfeiture, the
6 Government has its title. It could do whatever it wants with
7 the property.

8 THE COURT: Right.

9 MR. KOSTOLAMPROS: And effectuate a sale. And we can
10 make that happen.

11 THE COURT: Ms. O'Connor, what's the problem with
12 that? The Government would run the sale, there's a final order
13 of forfeiture, the Government would run the sale. Go the
14 Mexican Government, say we have a final order of forfeiture,
15 and the Government would run the sale. And would know what the
16 sharing arrangement is with respect to the sale of the
17 property.

18 MS. O'CONNOR: Your Honor, that, the Government again
19 did not have a problem with that. We have the emails to the
20 effect that Danske did not want to wait for that to happen.
21 And then we said the only alternative is to do an interlocutory
22 sale where the third parties have a right under statute to
23 weigh in on the process, and then it either goes against their
24 will, it would be without consent, or if everyone agrees to the
25 interlocutory sale and then the remaining claims in their

1 (inaudible-static) will be resolved.

2 THE COURT: All right, I think the Government should
3 reach out to the other claimants who are not part of these
4 negotiations, and see whether they would object to this. This
5 sounds pretty basic to me, to reach out to them and see what
6 their position would be. Okay? Can the Government do that?

7 MS. O'CONNOR: We're able to -- we're willing to do
8 that as long as Danske has no problem with us sharing the terms
9 of the settlement of their claim and the interlocutory --

10 THE COURT: Mr. Kostolampros, is there any problem
11 with sharing that with the other claimants?

12 MR. KOSTOLAMPROS: I haven't talked to my client about
13 it, but I don't see -- right now I need to check with them, but
14 I don't anticipate that being a problem. So I can get back to
15 the Government literally within minutes after this call.

16 THE COURT: All right. Do that, I think that should
17 happen immediately, I mean, if that is the major issue,
18 everything that has been proposed sounds so reasonable and
19 relatively easy, and the hardest thing is to agree on the
20 sharing arrangement. You've already agreed on the sharing
21 arrangement it seems to me not, not a major stumbling block.
22 Depending on what they say, I guess. But that should happen
23 immediately.

24 All right, and Ms. Ramachandran, you obviously can
25 help facilitate that as well, that discussion at least.

1 MS. RAMACHANDRAN: Sure, Your Honor.

2 THE COURT: So I think, what's a reasonable time to
3 allow the meet and confer and to allow this potential
4 resolution. Can, is a week, a letter to me in a week Mr.
5 Kostolampros, is that -- the reason I'm asking the Bank, is the
6 Bank is obviously the one that's having issues with the current
7 time frame.

8 MR. KOSTOLAMPROS: Your Honor, we can have the meet
9 and confer this week and get back to you next week. I think
10 for us it's going to be important to know what the scope of
11 discovery is. Because once you get into emails, it's going to
12 be difficult -- look the Bank is located overseas. It's subject
13 to UK and European privacy laws. So that's inevitably going to
14 slow a discovery process down if we get into emails.

15 So again it's going to be dependent on how, what the
16 Government is willing to narrow its request to, and then I can
17 get back to you and let you know and --

18 THE COURT: I would ask if you're not agreeing with
19 the Government on all the categories, I want you to give me an
20 estimate in that letter on Monday assuming, that there were no
21 such broad categories that would require that type of process,
22 what you think -- I'm not going to bind you to it I don't want
23 you to think if you give me an estimate. I just want to get a
24 sense for what time period we're looking at. So if you can
25 just give me an estimate assuming there are no broad categories

1 of documents that would require that type of review and
2 process, what you think a reasonable time frame would be for
3 the things that we're outlined. Okay?

4 MR. KOSTOLAMPROS: Yes, definitely.

5 THE COURT: All right.

6 MS. O'CONNOR: Your Honor, just to be clear, are we
7 also addressing Danske's request to the Government, because
8 Danske's requested discovery would be greater than the
9 discovery they're willing to give the Government based on their
10 filings.

11 THE COURT: Yes, I wasn't overwhelmed by the Bank's
12 request. I understand there's an equitable estoppel potential
13 claim, but my view is, and you know having gone through the
14 papers the first time around, the Bank's arguments with respect
15 to equitable estoppel don't relate to what those document
16 requests are. The document requests -- what's the Government's
17 basis for claiming X, Y or Z. Which you know, I don't think is
18 what this equitable estoppel issue revolves around. And the
19 Government you know, they put in declarations from the
20 accountant, sort of articulating what their basis is for the
21 claims that they're making.

22 So I don't anticipate that -- the equitable estoppel
23 portion of the case that I think the Court was looking at is to
24 the extent, you know, the Bank has claimed that they raised
25 things -- the Government raised at a meeting, they presented

1 for example, the best example is the agreement with Jowdy, to
2 the extent that that the Government is claiming somehow is
3 problematic or shows a lack of arm's length -- or should
4 somehow operate against the Bank, I think the Bank should be
5 able to point out to the Court that they made that available to
6 the Government and what the Government's response was to that.

7 But I don't know that there needs to be any discovery
8 on that because I think based on my review, you know, what was
9 previously, based upon the documentation, I think those points
10 were made by the Bank without having the deposition about, it
11 was at a meeting or something like that. So if I'm wrong about
12 that, I would allow some, again limited discovery of the Bank.
13 But I'm not anticipating granting the Bank's request for those
14 things that they asked for. Again the Bank is free to try to
15 narrow them in some way, but I just didn't see them as relating
16 to what I would think would be the equitable estoppel issue
17 going forward. All right?

18 All right, thank you very much everybody. I'll look
19 forward -- I anticipate having a conference sometime late next
20 week. But why don't I see the letter on Monday and then we'll
21 be setting a date for that. Okay?

22 MS. O'CONNOR: Thank you, Your Honor.

23 THE COURT: All right, have a good day.

24 * * * * *

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C E R T I F I C A T I O N

I, **PATRICIA POOLE**, court approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.

/S/ PATRICIA POOLE

TRACY GRIBBEN TRANSCRIPTION, LLC

DATE: June 8, 2021